

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ALAN NEWTON,	:	
Plaintiff,	: Civil Action No.	
-against-	: 07 CIV 6211	
THE CITY OF NEW YORK; DISTRICT ATTORNEYS MARIO	: (Scheindlin)	
MEROLA AND ROBERT T. JOHNSON, INDIVIDUALLY,	: :	
AND IN THEIR OFFICIAL CAPACITY; ANDREA FREUND	: :	
AND VARIOUS JOHN/JANE DOES, INDIVIDUALLY AND	: :	
IN THEIR OFFICIAL CAPACITIES AS EMPLOYEES OF THE	: :	
CITY OF NEW YORK WHO ARE/ WERE ASSISTANT	: :	
DISTRICT ATTORNEYS WITHIN THE OFFICE OF THE	: :	
DISTRICT ATTORNEY, COUNTY OF BRONX; DETECTIVE	: :	
JOANNE NEWBERT, DETECTIVE PHILLIP GALLIGAN,	: :	
DETECTIVE [JOHN DOE] HARTFIELD, DETECTIVE	: :	
[JOHN DOE] RYAN, DETECTIVE [JOHN DOE] HARRIS,	: :	
POLICE OFFICER DOUGLAS LEHO, POLICE OFFICER	: :	
WILLIAM SEAN O'TOOLE, LIEUTENANT MICHAEL	: :	
SHEEHAN, SERGEANT PATRICK J. McGUIRE, POLICE	: :	
OFFICER [JOHN DOE] HASKINS, POLICE OFFICER	: :	
[JANE DOE] KIELY, INSPECTOR JACK J. TRABITZ	: :	
AND VARIOUS JOHN/JANE DOES, INDIVIDUALLY	: :	
AND IN THEIR OFFICIAL CAPACITIES AS EMPLOYEES	: :	
OF THE CITY OF NEW YORK WHO ARE/ WERE MEMBERS	: :	
OF THE POLICE DEPARTMENT OF THE CITY OF NEW	: :	
YORK,	: : Defendants.	: : -----X

**SCHEDULING ORDER**

11/8/07

WHEREAS, the Court issued an Order for a (re-scheduled) Preliminary Conference in accordance with Fed. R. Civ. P. 16(b) on October 23, 2007 (the "Order"); and

WHEREAS, the Order requires that the parties jointly prepare and submit the following information as required by the Order:

**(1) The Date of the Conference & Attendance of Counsel:**

The Preliminary Conference was held this date, November 7, 2007, and was attended by John F. Schutty, Esq. of the Law Office of John F. Schutty, P.C., counsel for Plaintiff, and

Arthur G. Larkin, Esq. of The City of New York Law Department, counsel for the following Defendants: City of New York, Robert T. Johnson, Andrea Freund, Joanne Newbert, Bernard Ryan (sued herein as “Detective Joe Ryan”), Roland Harris (s/h/a “Detective John Doe Harris”), Douglas Leho, Willliam Sean O’Toole, Michael Sheehan, Patrick McGuire, Catherine Kiely (s/h/a “Police Officer Jane Doe Kiely”), and Jack Trabitz.

**(2) Concise Statement of the Issues:**

*(a) Plaintiff*

(i) Whether Plaintiff was unjustly convicted of rape, robbery and assault under Bronx Indictment No. 2441/84 due to a gross disregard for Plaintiff’s constitutional rights by New York City Police Department (hereinafter “NYPD”) investigators and members of the Bronx District Attorney’s Office (hereinafter “DA’s Office”)?

(ii) Whether Plaintiff’s incarceration was unreasonably extended by separate and wrongful post-conviction acts of certain named Defendants, namely the negligent loss, reckless loss, or intentional withholding of critical exculpatory evidence in violation of Plaintiff’s constitutional rights?

*(b) Defendants*

(i) Whether the complaint adequately states a claim under the Fourth, Fifth, Sixth, Eighth and/or Fourteenth Amendments to the constitution; whether all employees of the Bronx DA’s Office sued herein are entitled to absolute immunity from suit; among other issues.

**(3) Proposed Discovery Schedule:**

**(a) The Names of Persons to Be Deposed and a Schedule of Planned Depositions:**

Plaintiff will be offered for a deposition examination by defense counsel between January 15, 2008 and March 1, 2008.

*All depositions by 4/30  
All expert discovery by 9/30*

Depositions of defendants, including proposed witnesses to be noticed for deposition pursuant to Rule 30(b)(6), and non-parties will take place between January 15, 2008, and September 1, 2008. Plaintiff anticipates seeking Rule 30(b)(6) witnesses on the following subjects (among possible others): (i) how evidence was/is collected, organized, retained and produced in the investigation and prosecution of a sex crime in The City of New York, (ii) the training provided to members of the NYPD and DA's Office regarding the investigation of a sex crime in The City of New York (in the interviewing of witnesses, the preparation of line-ups, and the collection, organization, testing, retention and production of physical evidence). Plaintiff and Defendants reserve all rights to object to any deposition notice (including Rule 30(b)(6) deposition notices) on any ground set forth in the Federal Rules of Civil Procedure or the Local Civil Rules of this Court. .

**(b) A Schedule for the Production of Documents & Things**

The parties plan to exchange preliminary written requests for production of documents and things within the next twenty days (by November 27, 2007) and provide responses thereto no later than January 15, 2008. Further requests for documents and things will thereafter proceed concurrently with the taking of deposition testimony.

**(c) Dates by Which Expert Reports Will Be Exchanged & Depositions Taken**

Plaintiff will provide his expert witness reports by October 1, 2008 and the Defendants will provide their expert witness reports by November 15, 2008.

Plaintiff's expert witnesses will be deposed on or before December 15, 2008 and the Defendants' expert witnesses will be deposed by January 31, 2009.

**(d) Time When Discovery Is to Be Completed:**

January 31, 2009. *9/30/08*

**(e) Date Plaintiff Will Supply Its Pre-Trial Order Matters to Defense Counsel:**

March 1, 2009.

*to be scheduled*

**(f) Date Parties Will File Pre-Trial Order, Voir Dire Questions & Jury Instructions:**

The parties will file their Joint Pre-Trial Order, Proposed Voir Dire Questions and Proposed Jury Instructions on or before April 15, 2009.

*to be scheduled*

**(g) Date for Final Pre-Trial Conference:**

Oct. 14 at 4<sup>30</sup>

**(4) Statement of Limitations to Be Placed on Discovery:**

*Plaintiff:* None.

*Defendants:* It is anticipated that defendants may move pursuant to Rules 12(c) and/or 56 after some discovery has taken place. At that time, defendants may seek limitations on further discovery.

**(5) Statement of Discovery Issues Parties Were Unable to Resolve:**

None at this time.

**(6) Anticipated Fields of Expert Testimony:**

- (a) Eyewitness Identification;
- (b) Law Enforcement;
- (c) Document/Evidence Retention; and
- (d) Psychiatry/Psychology;
- (e) Evidence collection and maintenance practices in or about 1984-85, and 1994.
- (f) Development of forensic DNA testing; and
- (g) Others that may appear necessary after fact discovery.

**(7) Anticipated Length of Jury Trial:**

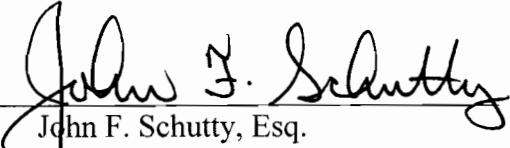
The parties presently anticipate that the jury trial in this case will last approximately three (3) to four (4) weeks.

**(8) Statement as to the Effect of This Scheduling Order:**

This Scheduling Order may be altered or amended only on a showing of good cause not foreseeable at the time of the conference or when justice so requires.

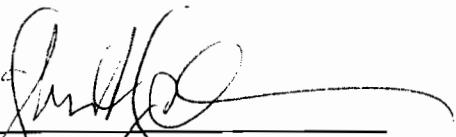
Law Office of John F. Schutty, P.C.

Law Department of the City of New York

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**SO ORDERED:**

  
SHIRA A. SCHEINDLIN  
U.S.D.J.

11/7/07